

Panaji, 29th July, 2004 (Sravana 7, 1926)

SERIES II No. 18

OFFICIAL GAZETTE



GOVERNMENT OF GOA

SUPPLEMENT

GOVERNMENT OF GOA

Department of Labour

Notification

No. 28/1/2003-LAB

The following Award passed by the Industrial Tribunal of Goa, at Panaji-Goa on 3-9-2003 in reference No. IT 34/2003, is hereby published as required by section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

V. R. Ghaisas, Under Secretary (Labour).

Panaji, 7th October, 2003.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/34/2003

Shri Ratan Halankar,
Dhangui Colony, Dhuler,
Mapusa-Goa.

— Workman/Party I

V/s

M/s Phil Corporation Ltd.,
Tivim Industrial Estate,
Mapusa-Goa.

— Employer/Party II

Workman/Party I - Absent.

Employer/Party II - Represented by Shri Y. Parab, The
Asst. Personnel Officer.

Panaji, dated: 3-9-2003.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order dated 23-6-2003 bearing No. 28/10/2003-LAB referred the following dispute for adjudication of this Tribunal.

1. "Whether Shri Ratan Halankar, Junior Officer (Accounts), can be construed as "Workman" as per section 2(s) of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) ?
2. If the answer of the above is in the affirmative, then, whether the action of the management of M/s Phil Corporation Ltd., Tivim, Bardez, Goa, in refusing employment to Shri Ratan Halankar, with effect from 16-9-2002, is legal and justified ?
3. If not, to what relief the workperson is entitled to ?"

2. On receipt of the reference a case was registered under No. IT/34/2003 and registered A/D notice was issued to the parties. The Workman-Party I (for short, "Workman") and the Employer-Party II (for short, "Employer") were duly served with the said registered A/D notice. Though the workman and the employer were duly served with the notice, they did not appear on 7-8-2003 at 10.30 a.m., when the case was fixed for hearing and therefore the case was adjourned and fixed on 20-8-2003 at 10.30 a.m. On this date the workman again remained absent. However, the Asst. Personnel Officer Shri Y. Parab remained present on behalf of the employer. Since inspite of the notice given the workman remained, it is obvious that the workman is not interested in pursuing with the matter. Since the

workman remained absent no statement of claim was filed on his behalf. Shri Y. Parab, representing the employer submitted that since the workman has not filed any statement of claim and has remained absent, the employer is not filing any statement of claim/ written statement and therefore the case was fixed for award.

3. The reference of the dispute was made by the Government at the instance of the workman since he challenged the action of the employer of refusing employment to him w. e. f. 16-9-2002. It is the workman who had raised the industrial dispute. The Bombay High Court, Panaji Bench, in the case of V. N. S. Engg. Services v/s Industrial Tribunal, Goa, Daman and Diu and another, reported in FJR Vol. 71 at page 393 has held that the obligation to lead the evidence to establish an allegation made by a party is on the party making an allegation, the test being that he who does not lead evidence must fail. The Bombay High Court has further held that the provision of Rule 10-B of the Industrial Disputes Act which requires the party raising a dispute to file a statement of demands relating to the issues in the order of reference for adjudication within 15 days from the receipt of the order of reference and forward copies to the opposite party involved, clearly indicates that the party who raises the industrial dispute is bound to prove contention raised by him and Industrial Tribunal or Labour Court would be erring in placing the burden of proof on the other party to the dispute. In another case i. e. in the case of V. K. Raj Industries v/s Labour Court (I) and others reported in 1981 (29) FLR 194, the Allahabad High Court has held that the proceedings before the Industrial Court are judicial in nature even though the Indian Evidence Act is not applicable to the proceedings before the Industrial Court, but the principles underlying the said Act are applicable. The High Court has further held that it is well settled that if a party challenges the validity of an order, the burden lies on him to prove the illegality of the order and if no evidence is produced the party invoking the jurisdiction must fail. The High Court has also held that if the workman fails to appear or to file written statement or produce evidence, the dispute referred by the Government cannot be answered in favour of the workman and he will not be entitled to any relief.

4. In the present case the contention was raised by the workman that he is a workman under the Industrial Disputes Act, 1947 and that the employer illegally refused employment to him w.e.f. 16-9-2002. The reference of the dispute was made by the Government at the instance of the workman. Therefore applying the

law laid down by the Bombay High Court and the Allahabad High Court in the above referred cases, the burden was on the workman to prove that he is a "workman" as defined u/s 2(s) of the Industrial Dispute Act, 1947 and that the action of the employer in refusing employment to him w.e.f. 16-9-2002 is not legal and justified. The workman was given opportunity to participate in the present proceedings. However, the workman remained absent and consequently no statement of claim was filed on his behalf. From the conduct of the workman it is clear that he is not interested in pursuing further with the matter. Therefore there is no material before me to hold that the workman Shri Ratan Halankar is a workman as defined under Sec. 2(s) of the Industrial Disputes Act, 1947 or that the action of the employer in refusing employment to him w.e.f. 16-9-2002 is not legal and justified. In the absence of any evidence the reference cannot be answered in favour of the workman. In the circumstances I hold that the workman has failed to prove that he is a 'workman' as defined u/s 2(s) of the Industrial Disputes Act, 1947. Once the workman has failed to prove that he is 'workman' as defined under the Act, the reference is not maintainable and hence the question of deciding whether the action of the management of the employer in refusing employment to the workman Shri Ratan Halankar w.e.f. 16-9-2002 is legal and justified and whether he is entitled to any relief does not arise. This question would have arisen only if it was held that the workman Shri Ratan Halankar is a 'workman' as defined under the Industrial Disputes Act, 1947. Since he has failed to prove that he is a 'workman' as defined under the Industrial Disputes Act, 1947, there is no industrial dispute and hence the reference made by the Government is not maintainable and as such the same is liable to be rejected.

In the circumstances, I pass the following order.

ORDER

It is hereby held that Shri Ratan Halankar is not a 'workman' as defined under Sec. 2(s) of the Industrial Disputes Act, 1947. I hereby further hold that since Shri Ratan Halankar is not a 'workman' there is no industrial dispute and hence reference made by the Government is not maintainable and as such the reference is rejected.

No order as to costs. Inform the Government accordingly.

Sd/-
(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal.

Notification

No. 28/1/2003-LAB

The following Award passed by the Industrial Tribunal of Goa, at Panaji-Goa on 4-9-2003 in reference No. IT/95/98, is hereby published as required by section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.
V. R. Ghaisas, Under Secretary (Labour).
Panaji, 7th October, 2003.

**IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA**

AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/95/98

Mrs. Linda Braganza e Coutinho (since deceased)
Motivado, Majorda,
Salcete-Goa.

— Workman/Party I

V/s

M/s. Gay Kindergarten,
Dr. Mukund Building,
Vasco-da-Gama, Goa.

— Employer/Party II

Party I – Since deceased.

Party II - Represented by Adv. A. Lourenco.

Panaji, dated: 4-9-2003.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order dated 8th October, 1998 bearing No. IRM/CON/VSC/(16)/97/11109 referred the following dispute for adjudication by this Tribunal.

"Whether the action of the management of M/s. Gay Kindergarten, Vasco-da-Gama, Goa, in terminating the services of Smt. Linda Braganza e Coutinho, with effect from 20-8-1996 is legal and justified ?

"If not, to what relief the workman is entitled" ?

2. On receipt of the reference a case was registered under No. IT/95/98 and registered A/D notice was issued to the parties. In pursuance to the said notice the parties put in their appearance. The Workman/Party I (for short "Workman") filed her statement of claim at Exb. 3. The facts of the case in brief as pleaded by the workman are that she was

employed with the Employer/Party II (for short, "Employer") as a teacher cum helper and she rendered her services within the jurisdiction of Mormugao Taluka for more than 23 years. That initially she was paid wages of Rs. 50/- p. m. and subsequently her wages were increased from time to time and her last drawn salary was Rs. 900/- p. m. That she was performing the duties of a helper cum teacher and was also providing assistance after school hours in the pharmacy known as Archies Pharmacy belonging to the employer. That her duties were from 8.00 a. m., to 8.00 p.m. with a lunch break for of one hour. That her services were terminated w.e.f. 20th August, 1996 orally without any justification. That the workman approached the employer to withdraw the oral notice given to her and requested to reinstate her in service but the employer refused to do so. That the workman thereafter made an application dated 2nd September, 1996 to the Asst. Labour Commissioner, Vasco, raising the industrial dispute. That since there was no amicable settlement the conciliation resulted in failure and failure report was sent to the Government. The workman contended that at the time when her services were terminated she was not paid retrenchment compensation as provided under Sec. 25F of the Industrial Disputes Act, 1947. The Workman contended that after termination of her services the workman employed another person in her place to do the work of helper cum teacher duty. The workman contended that termination of her service by the employer w.e.f., 20-8-96 is illegal and unjustified and therefore she is entitled to reinstatement in service with full back wages and continuity in service.

3. The employer filed written statement at Exb. 7. The employer stated that the workman Smt. Linda Braganza e Coutinho is not a workman under the Industrial Disputes Act and therefore this Tribunal has no jurisdiction to decide the reference. The employer stated that the services of the workman were not terminated and as such there is no industrial dispute. The employer denied that the workman was employed as a teacher and stated that she was working as a helper in the school on daily wages. The employer denied that the workman had put in more than 23 years of service of that initially she was paid wages of Rs. 50/- p. m., and that subsequently her wages were increased from time to time or that her last drawn salary was Rs. 900/- p. m. The employer stated that the workman absconded from duties from August, 1996 due to investigation done into the theft and misappropriation of funds. The employer stated that by letter dated 4th July, 1997 it was brought to the notice of the Asst. Labour Commissioner that the services of the workman were not terminated. The employer denied that the workman was performing the duties of helper cum teacher or that she used to provide assistance after school hours in the pharmacy named "Archies Pharmacy" or that her duties were from 8.00 a.m., to 8.00 p. m. with the lunch break of one

hour. The employer denied that the workman approached the employer with a request to withdraw the notice and requested to allow her to continue in the employment of the employer and that the request of the workman was refused. The employer denied that the services of the workman were terminated. The employer stated that in the conciliation proceedings by letter dated 4th July, 1997 the Asst. Labour Commissioner was informed that the workman had absconded from duties from August, 1996 because there was investigation into the theft and misappropriation of funds. The employer denied that the workman is entitled to any relief as claimed by her. The workman thereafter filed rejoinder at Exb. 8.

4. On the pleadings of the parties, issues were framed at Exb. 9 and thereafter the case was fixed for recording the evidence of the workman. Accordingly the evidence of the workman was partly recorded on 12-11-2001. The further evidence of the workman could not be recorded because she filed an application dated 22-1-2002 for permitting her to produce certain documents. When the said application was pending for disposal, an application dated 14th August, 2002 was filed on behalf of one Ms. Francisca Caesariana Agneta Antonia Josefa Senhorita Braganza stating that the workman Smt. Linda Braganza e Coutinho died on 25th May, 2002 leaving her behind as the legal representative. She prayed that she may be brought on record as the legal representative of the deceased workman. The employer filed reply to the said application objecting to the same. The employer stated that the deceased workman had left behind her son by name Lyndon Braganza e Coutinho who was living. After hearing the parties, this Tribunal passed an order dated 20th August, 2003 dismissing the application filed by Ms. Francisca Caesariana Agneta Antonia Josefa Senhorita Braganza, refusing to bring her on record as the legal representative of the deceased workman.

5. Since the workman Smt. Linda Braganza e Coutinho has expired and there is no legal representative of hers who is on record who could continue with the present reference, the dispute does not exist and consequently the reference does not survive.

In the circumstances, I pass the following order.

ORDER

It is hereby held that the reference made by the Government does not survive since the dispute does not exist.

No order as to costs. Inform the Government accordingly.

Sd/-

(Ajit J. Agni),

Presiding Officer,
Industrial Tribunal.

Notification

No. 28/1/2003-LAB

The following Award passed by the Industrial Tribunal of Goa, at Panaji-Goa on 2-9-2003 in reference No. IT/2/2003, is hereby published as required by section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

V. R. Ghaisas, Under Secretary (Labour).

Panaji, 7th October, 2003.

IN THE INDUSTRIAL TRIBUNAL

GOVERNMENT OF GOA

AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/2/2003

Workmen rep. by Ramada,
Renaissance Resort Employees Union,
Varca-Goa. — Workmen/Party I

V/s.

M/s Renaissance Goa Resort,
Fatrade,
Varca-Goa. — Employer/Party II

Party I – Represented by Shri Nilesh Shirodkar,
Secretary of Ramada Renaissance Resort
Employees Union.

Party II - Represented by Adv. Shri M. S. Bandodkar.

Panaji, dated: 2-9-2003.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order dated 7-1-2003 bearing No. 28/63/2002-LAB referred the following dispute for adjudication by this Tribunal.

"Whether the action of the management of M/s Renaissance Goa Resort, Varca, in terminating the service of their workmen, namely, Oswan Rodrigues, Vicky Travasso, Darwin Fernandes and Rodney Pereira, with effect from 31-8-2002, is legal and justified ?

If not, to what relief the workmen are entitled to ?

2. On receipt of the reference a case was registered under No. IT/2/2003 and registered A/D notice was issued to the parties. In pursuance to the said notice the parties put in their appearance. The Union-Party I and the Employer-Party II, (for short, "Employer") submitted that they are trying to arrive at an amicable

settlement and that at their request the case was fixed on 21-8-2003 for filing the terms of settlement. On this date Shri Nilesh Shirodkar, the secretary of the union appeared on behalf of the union and Adv. M. S. Bhandodkar appeared on behalf of the employer. They both submitted that the dispute between the parties was amicably settled and they filed the terms of settlement dated 21-8-2003 at Exb. 5. They also filed an application dated 21-8-2003 at Exb. 6 praying that consent award be passed in terms of the settlement dated 21-8-2003.

I have gone through the terms of the settlement dated 21-8-2003 filed by the parties at Exb. 5. The said terms are duly signed by the office bearers of the union who had raised the dispute on behalf of the workmen and also by the employer and I am satisfied that the said terms of settlement are certainly in the interest of the workmen. I therefore accept the submissions made by the parties and pass the consent award in terms of the settlement dated 21-8-2003, Exb. 5.

ORDER

1. It is agreed between the parties that the management of Renaissance Goa Resort, Varca shall employ Mr. Oswin Rodrigues and Mr. Rodney, Pereira, concerned with the reference No. IT/2/2003 as probationary for a period of 6 months with effect from the date this settlement is filed before the Hon'ble Court and accepted by the Court.
2. It is agreed between the parties that the Management of Renaissance Goa Resort, Varca, shall employ Mr. Oswin Rodrigues and Rodney Pereira the workmen concerned in the reference No. IT/2/2003 as a probationary workmen for a period of 6 months within a week of filing of the settlement before this Hon'ble Court and the settlement is accepted by the Hon'ble Court. These workmen shall be confirmed in writing by the Management after expiry of the probationary period.
3. It is further agreed between the parties that the Union/Workmen shall give up the claim of Mr. Vicky Travasso and Darwin Fernandes as these workmen concerned in the reference have taken a job in one of the Gulf Countries and the Union/Workmen further confirmed that these workmen shall have no claim of whatsoever nature against the Management including any claim of re-instatement or re-employment.
4. It is further agreed between the parties that in so far as Mr. Ivon Cardozo is concerned whose dispute has been raised before the Deputy Labour Commissioner and whose dispute is pending before the Conciliation Officer, Margao, the demand of his re-instatement and back wages is not pressed and the Union is giving up his claim for re-instatement and other consequential benefits as he has also left Goa to

take up a job in one of the Gulf Countries and Union/Workmen further confirmed that these workmen shall have no claim of whatsoever nature against the Management including any claim of re-instatement or re-employment.

5. It is further agreed between the parties that this settlement is in full and final satisfaction of the entire claims made by the Union in the reference and in the letter dated 26-7-2002 sent to the Deputy Labour Commissioner, Margao.
6. It is further agreed between the parties that they shall make an appropriate application before the Industrial Tribunal in Reference No. IT/02/03 for making award in the terms of this settlement.

No order as to costs. Inform the Government accordingly.

Sd/-
(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal.

Notification

No. 28/1/2003-LAB

The following Award passed by the Industrial Tribunal of Goa, at Panaji-Goa on 14-8-2003 in reference No. IT/59/95, is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

V. R. Ghaisas, Under Secretary (Labour).

Panaji, 7th October, 2003.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)
Ref. No. IT/59/95

Ms. Alice D'Sa and 32 others,
Rep. by Goa Trade & Commercial
Workers' Union,
Velho's Building, 2nd Floor,
Panaji-Goa.

... Workman/Party I

V/s

M/s. Nigel Plastics,
Vasco da Gama, Goa.

... Employer/Party II

Workman/Party I - Represented by Adv. R. Mangueshkar.

Employer/Party II - Represented by Adv. Shri G. K. Sardessai.

Panaji, dated: 14-8-2003.

Award

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order dated 27-9-95 bearing No. 28/49/95-LAB referred the following dispute for adjudication by this Tribunal.

"Whether the action of the management of M/s Nigel Plastics, Nagova, Verna, in refusing employment to the following 33 workmen for the period from 12-11-94 to 6-1-95 is legal and justified and whether the workmen are entitled to full wages for the said period ?

1. Alice De Sa.
2. Rita D'Sa.
3. Piedade Gama.
4. Rosario Fernandes.
5. Flona Fernandes.
6. Rosita Fernandes.
7. Netty Fernandes.
8. Rosy D'Silva.
9. Joanita D'Silva.
10. Espy Faria.
11. Maria Braganza.
12. Esmeralda Fernandes.
13. Fatima Fernandes.
14. Suchitra Naik.
15. Simpliciana D'Silva.
16. Joana Fernandes.
17. Maria D'Souza.
18. Santana Carvalho.
19. Lina Vaz.
20. Piedade Carvalho.
21. Anna Maria Carvalho.
22. Succorina Xaier.
23. Adelina Fernandes.
24. Rita Fernandes.
25. Liberata Rodrigues.
26. Feliciano Monteiro.
27. Agnelo Fernandes.
28. Bernardo Gama.
29. Seby D'Sa.
30. Christina Ferrao.
31. Rosy Fernandes.
32. Florianã Fernandes.
33. Lawrence Carvalho.

If not, to what relief the workmen are entitled ?"

2. On receipt of the reference the case was registered under No. IT/59/95 and registered A/D notice was issued to the parties. In pursuance to the said notice the parties put in their appearance. The workman/Party-I (for short, "Union") filed statement of claim at Exb. 3. The facts of the case in brief as pleaded by the Union are that the Employer/Party-II (for short, "Employer") is a proprietary concern manufacturing plastic bottles having factory at Manzil Wado, Nagoa, Verna, Salcete-Goa, and the workmen whose names are mentioned in the schedule of reference are employed by the employer in the said factory. That the employer

refused employment to the workmen on 12-11-94 and as such they approached the union and enrolled themselves as members of the same and further requested the said union to take up their dispute. That the union thereafter sent a letter dated 14-11-94 to the Manager of the employer requesting him to maintain harmonious industrial relations and by the said letter the union also raised a dispute regarding refusal of employment to the workmen and stated that the said refusal is illegal and unjustified. That the employer denied that the workmen were the workmen of his unit and contended that they were engaged to do job works and that they were engaged to do job works and that they were working on piece rate basis. That by letter dated 15-12-94 the union raised industrial dispute before the Labour Commissioner, Panaji, and requested him to intervene in the matter of refusal of employment to the workmen and further requested him to send the Labour Inspector to the Factory at Nagao to investigate into the various irregularities which were being carried out in the factory. That various meetings were called by the Dy. Labour Commissioner, Margao, to resolve the issue but the management refused employment to the workmen. The union contended that the workmen had put in more than 240 days of continuous service with the employer and the action of the employer in refusing employment to the workman without giving proper notice or paying legal dues is illegal and unjustified. That the employer filed written statement before the Dy. Labour Commissioner stating that he is closing the factory but in fact the employer continued to run the factory with the help of new recruits. That the conciliation proceedings held by the Dy. Labour Commissioner, Margao, ended in failure and the failure report was submitted to the Government by letter dated 8-8-95. The union contended that the action of the employer in refusing employment to the workman from 12-11-94 is illegal and unjustified. The union prayed that directions be issued to the employer to pay all the legal dues to the workmen along with penal interest.

3. The employer filed written statement at Exb. 4. The employer denied that the union is the sole representative union of the workmen employed in the factory of the employer. The employer stated that the workmen were engaged on piece rate basis and denied that employment was refused to them. The employer denied that the workmen are the members of the union and further stated that the workmen were engaged merely as casuels to perform intermittent works. The employer stated that the workmen without any reason abstained from work. The employer denied that any letter was addressed to his Manager informing about the unionisation of the workers. The employer stated that factory was closed w.e.f. 7-1-95. The employer stated that the workmen refused to report for work and continued to remain absent from work without any justified cause. The employer denied that the workmen had completed 240 days of continuous service with the employer. The employer denied that the workmen were not paid their legal dues or that he commenced the production by back doors by engaging new recruits.

The employer stated that the factory has been effectively closed down and no production of whatsoever nature is being carried out in the said factory. The employer denied that the workmen are entitled to reinstatement with full back wages and continuity of service. The union thereafter filed rejoinder at Exb. 5.

4. On the pleadings of the parties issues were framed at Exb. 6 and thereafter the case was fixed for recording evidence of the union. Several opportunities were given to the union to lead evidence but the union failed to lead any evidence in the matter. Ultimately the evidence of the union was closed on 20-9-2001 and the case was fixed for recording employer's evidence. Thereafter the union filed an application dated 8-10-2001 at Exb. 9 for setting aside the order dated 20-9-2001 whereby the evidence of the union was closed. After hearing the parties this Tribunal by order dated 8-11-2002 set aside the order dated 20-9-2001 whereby the evidence of the union was closed and the union was permitted to lead evidence in the matter. Thereafter several opportunities were given to the union to lead evidence on behalf of the workmen. In spite of the several opportunities given no evidence came to be led on behalf of the union/workmen and since none appeared on behalf of the union/workmen on 17-4-2003, the evidence of the union/workmen was closed and the case was fixed for recording employer's evidence on 13-6-2003 at 10.30 a.m. On this date also none appeared on behalf of the union/workmen. Adv. G. K. Sardesai, representing the employer stated that he is not leading any evidence on behalf of the employer since no evidence has been led by the union. He submitted that the burden was on the union to prove that the workmen were refused employment by the employer from 12-11-94 to 6-1-95 and since the union has failed to prove the same no relief can be granted to the workmen.

5. The reference of the dispute was made by the Government at the instance of the Union. It is the union who had raised the industrial dispute. The Bombay High Court, Panaji Bench, in the case of V.N.S. Engg. Services v/s Industrial Tribunal, Goa, Daman and Diu and another, reported in FJR Vol. 71 at page 393 has held that the obligation to lead the evidence to establish an allegation made by a party is on the party making an allegation, the test being that he who does not lead evidence must fail. The Bombay High Court has further held that the provision of Rule 10-B of the Industrial Disputes Act which requires the party raising a dispute to file a statement of demands relating to the issues in the order of reference for adjudication within 15 days from the receipt of the order of reference and forward copies to the opposite party involved, clearly indicates that the party who raises the industrial dispute is bound to prove contention raised by him and Industrial Tribunal or Labour Court would be erring in placing the burden of proof on the other party to the dispute. In another case i.e. in the case of V. K. Raj Industries v/s Labour Court (I) and others reported in 1981 (29) FLR 194, the Allahabad High Court has held that the proceedings before the Industrial Court are judicial in

nature even though the Indian Evidence Act is not applicable to the proceedings before the Industrial Court, but the principles underlying the said Act are applicable. The High Court has further held that it is well settled that if a party challenges the validity of an order, the burden lies on him to prove the illegality of the order and if no evidence is produced the party invoking the jurisdiction must fail. The High Court has also held that if the workman fails to appear or to file written statement or produce evidence, the dispute referred by the Government cannot be answered in favour of the workman and he will not be entitled to any relief.

6. In the present case the dispute was raised by the union on behalf of the workmen that the workmen were illegally and without justification refused employment by the employer from 12-11-94 to 6-1-95 as can be seen from the order of reference. In the written statement filed by the employer it was denied that the workmen were refused employment. The employer had stated that the workmen had absented from work from 12-11-94. In view of the above stand taken by the employer the burden was on the union to prove that the employer had refused employment to the workmen from 12-11-94 to 6-1-95 and that such refusal was illegal and unjustified. The union was given several opportunities to lead evidence to prove that employment was refused to the workmen from 12-11-94 to 6-1-95 and that the said refusal was illegal. However, in spite of the opportunities given no evidence whatsoever was led by the union and the evidence of the union was closed in the circumstances stated earlier. This being the case, there is no evidence to prove that the workmen were refused employment from 12-11-94 to 6-1-95. In the circumstances, I hold that there is no refusal of employment to the workmen by the employer from 12-11-94 to 6-1-95 and therefore the workmen are not entitled to any wages for the said period.

Hence, I pass the following order.

ORDER

It is hereby held that there is no refusal of employment to the 33 workmen named in the reference, by the management of M/s Nigel Plastics, Nagova, Verna, for the period from 12-11-94 to 6-1-95. It is hereby further held that the workmen are not entitled to any relief.

No order as to costs. Inform the Government accordingly.

Sd/-

(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal.

Notification

No. 28/1/2003-LAB

The following Award passed by the Industrial Tribunal of Goa, at Panaji-Goa on 5-9-2003 in reference No. IT/33/2003, is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

V. R. Ghaisas, Under Secretary (Labour).

Panaji, 7th October, 2003.

IN THE INDUSTRIAL TRIBUNAL**GOVERNMENT OF GOA****AT PANAJI**

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/33/2003

Mrs. Krishne C. Mayekar,
Near SFX High School,
Shetye Wada,
Mapusa, Bardez-Goa. ... Workman/Party I

V/s

M/s. Phil Corporation Ltd.,
Tivim Industrial Estate,
Mapusa-Goa. ... Employer/Party II

Workman/Party I - Absent.

Employer/Party II - Represented by Shri Y. Parab, The
Asst. Personnel Officer.

Panaji, dated: 5-9-2003.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order dated 23-6-2003 bearing No. 28/10/2003-LAB referred the following dispute for adjudication of this Tribunal.

(1) "Whether Mrs. Krishne C. Mayekar, Junior Officer, can be construed as "Workman" as per section 2(s) of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) ?

(2) If the answer of the above is in the affirmative, then, whether the action of the management of M/s Phil Corporation Ltd., Thivim, Bardez, Goa, in refusing employment to Mrs. Krishne C. Mayekar, with effect from 16-9-2002, is legal and justified ?

(3) If not, to what relief the workperson is entitled ?"

2. On receipt of the reference a case was registered under No. IT/33/2003 and registered A/D notice was issued to the parties. The Workman-Party I (For short, "Workman") and the Employer-Party II (for short, "Employer") were duly served with the said registered A/D notice. Though the workman and the employer were duly served with the notice, they did not appear on 7-8-2003 at 10.30 a. m., when the case was fixed for hearing and therefore the case was adjourned and fixed on 20-8-2003 at 10.30 a.m. On this date the workman again remained absent. However, the Asst. Personnel Officer Shri Y. Parab remained present on behalf of the employer. Since inspite of the notice given the workman remained absent, it is obvious that the workman is not interested in pursuing with the matter. Since the workman remained absent no statement of claim was filed on her behalf. Shri Y. Parab, representing the employer submitted that since the workman has not filed any statement of claim and has remained absent, the employer is not filing any statement of claim/written statement and therefore the case was fixed for award.

3. The reference of the dispute was made by the Government at the instance of the workman since she challenged the action of the employer of refusing employment to her w.e.f. 16-9-2002. It is the workman who had raised the industrial dispute. The Bombay High Court, Panaji Bench, in the case of V.N.S. Engg. Services v/s Industrial Tribunal, Goa, Daman and Diu and another, reported in FJR Vol. 71 at page 393 has held that the obligation to lead the evidence to establish an allegation made by a party is on the party making an allegation, the test being that he who does not lead evidence must fail. The Bombay High Court has further held that the provision of Rule 10-B of the Industrial Disputes Act which requires the party raising a dispute to file statement of demands relating to the issues in the order of reference for adjudication within 15 days from the receipt of the order of reference and forward copies to the opposite party involved, clearly indicates that the party who raises the industrial dispute is bound to prove contention raised by him and Industrial Tribunal or Labour Court would be erring in placing the burden of proof on the other party to the dispute. In another case i.e. in the case of V. K. Raj Industries v/s Labour Court (I) and others reported in 1981 (29) FLR 194, the Allahabad High Court has held that the proceedings before the Industrial Court are judicial in nature even though the Indian Evidence Act is not applicable to the proceedings before the Industrial Court, but the principles underlying the said Act are applicable. The High Court has further held that it is well settled that if a party challenges the validity of an order, the burden lies on him to prove the illegality of the order and if no evidence is produced the party invoking the jurisdiction must fail. The High Court has also held that if the workman fails to appear or to file written statement or produce evidence, the dispute referred by the Government cannot be answered in favour of the workman and he will not be entitled to any relief.

4. In the present case the contention was raised by the workman that she is a workman under the Industrial Disputes Act, 1947 and that the employer illegally refused employment to her w.e.f. 16-9-2002. The reference of the dispute was made by Government at the instance of the workman. Therefore applying the law laid down by the Bombay High Court and the Allahabad High Court in the above referred cases, the burden was on the workman to prove that she is a "workman" as defined u/s 2(s) of the Industrial Disputes Act, 1947 and that the action of the employer in refusing employment to her w.e.f. 16-9-2002 is not legal and justified. The workman was given opportunity to participate in the present proceedings. However, the workman remained absent and consequently no statement of claim was filed on her behalf. From the conduct of the workman it is clear that she is not interested in pursuing further with the matter. Therefore there is no material before me to hold that the workman Mrs. Krishne C. Mayekar is a workman as defined under Sec. 2(s) of the Industrial Disputes Act, 1947 or that the action of the employer in refusing employment to her w.e.f. 16-9-2002 is not legal and justified. In the absence of any evidence the reference cannot be answered in favour of the workman. In the circumstances I hold that the workman has failed to prove that she is a 'workman' as defined u/s 2(s) of the Industrial Disputes Act, 1947. Once the workman has failed to prove that she is a 'workman' as defined under the Act, the reference is not maintainable and hence the question of deciding whether the action of the management of the employer in refusing employment to the workman Mrs. Krishne C. Mayekar w.e.f. 16-9-2002 is legal and justified and whether she is entitled to any relief does not arise. This question would have arisen only if it was held that the workman Mrs. Krishne C. Mayekar is a 'workman' as defined under the Industrial Disputes Act, 1947. Since she has failed to prove that she is a 'workman' as defined under the Industrial Disputes, 1947, there is no industrial dispute and hence the reference made by the Government is not maintainable and as such the same is liable to be rejected.

In the circumstances, I pass the following order.

ORDER

It is hereby held that Mrs. Krishne C. Mayekar is not a 'workman' as defined under Sec. 2(s) of the Industrial Disputes Act, 1947. I hereby further hold that since Mrs. Kirshne C. Mayekar is not a 'workman' there is no industrial dispute and hence reference made by the Government is not maintainable and as such the reference is rejected.

No order as to costs. Inform the Government accordingly.

Sd/-
(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal

Notification

No. 28/1/2003-LAB

The following Award passed by the Industrial Tribunal of Goa, at Panaji-Goa on 7-10-2003 in reference No. IT/15/2003, is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

V. R. Ghaisas, Under Secretary (Labour).

Panaji, 28th October, 2003.

IN THE INDUSTRIAL TRIBUNAL

GOVERNMENT OF GOA

AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/15/2003

Shri Laximan Chodankar,
Salvador do Mundo,
Alto Porvorim,
Bardez Goa.

— Workman/Party I

V/s.

M/s. Whispering Palms
Beach Resort, Candolim,
Bardez- Goa.

— Employer/Party II

Workman/Party I — Represented by Shri V. Sawant.

Employer Party II — Represented by Adv. Shri A. Kundaikar.

Panaji, dated: 7-10-2003.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa referred the following dispute for adjudication of this Tribunal.

1. Whether the action of the management of M/s. Whispering Palms Beach Resort, Candolim, Bardez Goa, in dismissing the services of Shri Laximan Chodankar, Sr. Mechanic with effect from 28-2-2002, is legal and justified ?

2. If not, what relief the workman is entitled to ?

2. On receipt of the reference a case was registered under No. IT/15/03 and registered A/D notice was issued to the parties. In pursuance to the said notice the parties put in their appearance. The workman/party

I (for short "workman") filed his statement of claim at Exb. 4. The facts of the case in brief as pleaded by the workman are that he was employed as a Sr. A. C. Mechanic with the employer/Party - II (for short "employer") on a salary of Rs. 4837/- p. m. That a charge sheet was issued to him by the employer on 1-12-2001 alleging certain acts of misconduct against him. That a domestic enquiry was conducted against him which was improper, unfair and illegal. That during the course of enquiry the workman was not paid proper and legal subsistence allowance. That the findings given by the enquiry officer are perverse and they are not based on the evidence on record. The workman contended that the punishment of dismissal from service awarded to him by the employer is improper, excessive and disproportionate to the misconduct alleged to be proved against him. The workman contended that he has not been dismissed from service by the competent authority. The workman claimed that his dismissal from service is illegal and unjustified and he is entitled to reinstatement in service with full back wages and continuity of service.

3. The employer did not file written statement on the date when the case was fixed for filing written statement. On the said date i.e. on 13-4-2003 the employer filed an application praying for time to settle the dispute between the employer and the workman. In the said application the employer gave an offer to the workman to join duties from 14-8-2003. The said offer was accepted by the workman and he stated that he would join the duties from 14-8-2003. Thereafter the case was fixed for filing the terms of settlement by the parties. Accordingly on 6-10-2003 the parties appeared and submitted that the dispute has been amicably settled. They filed the terms of settlement dated 6-10-2003 at Exb. 6 and prayed that consent award be passed in terms of the said settlement. I have gone through the terms of the settlement dated 6-10-2003 which are duly signed by the parties and I am satisfied that the said terms are certainly in the interest of the workman. I therefore accept the terms of the settlement filed by the parties and pass the consent award in terms of the settlement dated 6-10-2003 Exb. 6.

ORDER

1. It is agreed between the parties that the workman concerned in the reference shall be reinstated in the hotel on the pay scale, which he was drawing when he was dismissed from the services. The workman shall be paid an exgratia amount of rupees seventy thousand only (Rs. 70,000/-).

2. It is agreed between the parties that the workman's absence from the date of dismissal till the date of joining shall be treated as unpaid leave.

3. It is agreed by the workman/party-I that the claim raised in the above reference shall stand conclusively settled and have no claim or any monetary benefits in future, which can be computed in terms of money.

4. It is agreed by the Workman/Party-I that he will fully co-operate with the Employer/Party-II maintaining the discipline and smooth functioning of hotel.

No order as to costs. Inform the Government accordingly.

Sd/-

(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal.

Notification

No. 28/1/2003-LAB

The following Award passed by the Industrial Tribunal of Goa, at Panaji-Goa on 7-10-2003 in reference No. IT/88/89 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.
V. R. Ghaisas, Under Secretary (Labour).

Panaji, 28th October, 2003.

IN THE INDUSTRIAL TRIBUNAL

GOVERNMENT OF GOA

AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/88/89

Shri Bombi B. Gavde,
H. No. 355, Kharebhat,
Banastarim-Goa.

... Workman/Party I

V/s

M/s. Kadamba Transport
Corporation Ltd.,
Panaji-Goa.

... Employer/Party II

Workman/Party I Represented by Adv. A. Nigalye.

Employer/Party II - Represented by Adv. P. J. Kamat.

Panaji, dated: 7-10-2003.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order dated 5th December, 1989 bearing No. 28/69/89-LAB referred the following dispute for adjudication by this Tribunal.

"Whether the action of the management of M/s Kadamba Transport Corporation Limited, Panaji in dismissing Shri Bombi Bhicar Gavde, Conductor, with effect from 6-7-1988 is legal and justified ?

If not, to what relief the workman is entitled ?"

2. On receipt of the reference, a case was registered under No. IT/88/89 and registered A/D notice was issued to the parties. In pursuance to the said notice the parties put in their appearance. The Workman-Party I (for short, "Workman") filed his statement of claim at Exb. 2. The facts of the case in brief as pleaded by the workman are that he was employed as a conductor with the Employer-Party II (for short, "employer") and that during his tenure of service he tried to serve the employer to the best of his ability. That in April 1987 he received a charge sheet dated 7th April, 1987 levelling charges against him to the effect that when he was on duty on Panaji-Bangalore route on 28-3-87 on vehicle No. GDX - 128, he was checked by the flying squad staff at Varur, a place 20 kms from Hubli and it was found that he had collected a fare of Rs. 149/- and issued unpunched tickets valued at Rs. 100/- which were unused old tickets and rest of the tickets amounting to Rs. 49/- were from his tray which were issued without punching. That prior to the receipt of the above charge sheet the vehicle No. GDX - 128 on which the workman was posted on the above said route was checked by the checking staff but no irregularities were found at the time of the said checking. That inspite of this fact the workman was issued a default notice by the checking staff, the contents of which were a variance and contradictory to the charge sheet. That the workman submitted his written explanation to the charge sheet denying all the charges made against him. That thereafter departmental enquiry was held against the workman which was illegal and it was held in violation of the principles of natural justice. That the Inquiry Officer was bias against the workman and he did not give adequate opportunity to him to defend himself in the enquiry. That the Inquiry Officer submitted his report to the management holding that the charges made against the workman were proved. That thereafter the workman received a show cause notice stating that the management had concurred with the findings of the Inquiry Officer and asking him to show cause as to why the punishment of dismissal should not be imposed on him. That the

workman replied to the said show cause notice but the employer by order dated 6-7-88 dismissed him from service forthwith. The workman contended that the findings of the Inquiry Officer are perverse and they are not based on the evidence on record. The workman contended that the dismissal order passed against him by the employer is illegal and unjustified and therefore he raised an industrial dispute before the employer demanding reinstatement in service with full back wages. That conciliation proceedings were held by the Labour Commissioner but the same resulted in failure and on receipt of the failure report the Government made the above reference of the dispute for adjudication of this Tribunal. The workman contended that he has not committed any misconduct as alleged in the charge sheet. The workman claimed that he is entitled to reinstatement in service with full back wages.

3. The employer filed written statement at Exb. 3. The employer stated that by letter dated 23-4-84 the workman was employed as a substitute conductor on daily wages w.e.f. 16-4-84 and he continued as such up to 28-2-85. The employer stated that by order dated 23-3-85 the workman was appointed on probation for a period of 3 months from 1-3-85 and thereafter he was confirmed in service. The employer stated that on 28-3-87 the workman was on duty on Panaji-Bangalore route on bus No. GDX - 128 and when the said bus was checked by the flying squad staff at Varur, it was found that the conductor had collected a sum of Rs. 149/- from two passengers and they were issued old unpunched tickets of Rs. 100/- which were not entered on his way bill and that the tickets for Rs. 49/- were issued from the current tickets which were entered in the way bill but they were not punched. The employer stated that a default notice was given to the workman by the checking staff and the workman filed his reply dated 3-4-87 admitting that the tickets were not punched but denied the rest of the contents of the default notice. The employer stated that thereafter the charge sheet dated 7-4-87 was issued to the workman and an enquiry was conducted against him in which the workman was represented by Co-worker Shri Avelino Fernandes. The employer stated that the workman fully participated in the enquiry and the Inquiry Officer submitted his findings dated 23-2-88 holding the workman guilty of all the charges levelled against him. The employer stated that the management concurred with the said findings and after considering his past records issued a show cause notice dated 8-4-88 to the workman as to why he should not be dismissed from service as the gravity of misconduct committed by him warranted punishment of dismissal. The employer denied that the Inquiry Officer was bias against the workman or that he violated the principles of natural justice or that he did not give adequate opportunity to the workman to defend himself in the enquiry. The employer denied that the findings

given by the Inquiry Officer are perverse. The employer stated that the punishment of dismissal from service awarded to the workman is legal and justified and the workman is not entitled to any relief as claimed by him.

4. On the pleadings of the parties, issues were framed at Exb. 4 and thereafter the case was fixed for recording the evidence of the parties. The workman filed an application dated 2-1-96 stating that he does not want to lead any oral evidence in the matter and that he desires to make submissions on the validity of the findings of the Inquiry Officer. Subsequently the evidence of the employer was recorded on the issues but the workman did not lead any evidence and the case was fixed for final arguments. At this stage the workman as well as the employer filed an application dated 4th July, 2000 stating that the workman had not pressed for the issue No. 1 which was as regards fairness of the enquiry. The parties stated that the issues on perversity of the findings has not been framed and as such the issue in that respect is required to be framed. The parties further stated that no further evidence either oral or documentary is required to be produced by the parties on the issue to be framed. Accordingly, additional issue No. 1A was framed on 4-7-2000 on the proving of misconduct against the workman.

5. The issues which are framed in the present case are as follows :

1. Whether domestic enquiry held against the workman is fair and proper ?

1A. Whether the charges of misconduct are proved to the satisfaction of the Tribunal by acceptable evidence ?

2. Does Party I-Workman prove that the order of dismissal passed against him is not legal and justified ?

3. If yes, is Party I entitled to any relief ?

4. What award or order ?

6. My findings on the issues are as follows :

Issue No. 1 : In the negative.

Issue No. 1A : In the affirmative.

Issue No. 2 : In the negative.

Issue No. 3 : In the negative.

Issue No. 4 : As per orders below.

REASONS

7. Issue No. 1 : This issue was framed because the workman in his statement of claim took the stand that the domestic enquiry held against him is not fair and

proper. Adv. Shri Nigalye, the learned Advocate for the workman, however submitted that he does not want to lead any evidence on the issue of fairness of enquiry. He submitted that the workman is not challenging the fairness of enquiry and as such he does not want to press for the issue No.1. Since the issue No. 1 was framed because the workman challenged the fairness of enquiry conducted against him and since in the course of the proceedings the workman submitted that he does not want to lead evidence on the fairness of the enquiry and that he does not press for the said issue, it has to be held that the enquiry held against the workman is fair and proper. I therefore hold that the workman has failed to prove that the domestic enquiry held against him is not fair and proper and hence I answer the issue No. 1 in the negative.

8. Issue No. 1A : The workman has challenged the findings of the enquiry on the ground that they are perverse. The original of the enquiry records have been produced by the employer. The charge sheet issued to the workman is dated 7-4-1987. As per the said charge sheet the charge against the workman is that while he was on route Panaji-Bangalore on 28-3-87 on vehicle No. GDX-128 he was checked by flying squad staff at Varur, a place 20 kms, from Hubli, and it was detected that the workman collected fare of Rs. 149.00 and issued unpunched tickets of Rs. 100/- which were unused old tickets and were not entered in his way bill and the rest of the tickets amounting to Rs. 49/- were from his tray which were issued without punching. The above act on the part of the workman amounted to following misconduct under clause 20 of the Certified Standing Orders.

XV) Theft, fraud or dishonesty in connection with the employer's business or property inside or outside the establishment or theft of property of another employee within the premises of the establishment.

XXXV) Breach of any rules or instructions given by the superiors for the proper functioning of safety of the establishment.

LXI) Breach of any of the provisions prescribed to be complied with by a workman under the standing orders.

9. In the case of Hamdard Dawakhana Wakf v/s its workman reported in 1962 II LLJ 772, the Supreme Court has held that finding recorded in a domestic enquiry can be characterised as perverse by an Industrial Tribunal only if it is shown that such a finding is not supported by any evidence or is entirely opposed to the whole body of evidence adduced before it. In the case of Parry's (Calcutta) Employees Union v/s Parry & Co., and others reported in 1966 I LLJ 535 the Supreme Court

has held that a wrong finding of fact could not be characterised as perverse finding. In the case of Sri Shivasakthi Bus Service Kallkuruchi Post, South Arcot v/s P. Gopal and another, the Madras High Court has held that the Labour Court exercising jurisdiction under Sec. 33A of the Industrial Disputes Act, 1947 cannot assume the role of an appellate court, pick holes in the evidence on record and substitute its judgment to that of the domestic Inquiry Officer. The High Court has held that if the decision is arrived at, no evidence or evidence which is thoroughly unreliable and unacceptable and if a reasonable and well instructed person would not act upon such evidence and decide, then it is to be characterised as a perverse order; but if there is evidence on record however compensious it may be, if it is acceptable and if it could be relied upon, then a conclusion arrived at in such as that cannot be termed as perverse order. Therefore in the light of law laid down in the above judgements, that it is to be seen whether the findings given by the Inquiry Officer are perverse.

10. In support of the charges the management has examined ATI Shri Francis Dias who was the member of the line checking staff and the workman has examined himself in defence. The fact that the workman was the conductor on the bus/vehicle No. GDX-128 on 28-3-87 plying on route Panaji-Bangalore and that the said bus was checked at 00.50 hrs. at Varur, a place 20 kms away from Hubli, by the line checking staff is not disputed. In the evidence the management has produced the default notice issued to the workman at Exb.M-1; the 10 tickets collected from two passengers at Exb. M-2; the 10 tickets collected from one passenger at Exb. M-3; the way bill No. 098458 at Exb.M-4; the window booking sheet dated 27-3-87 found with the workman at Exb. M-5 and the way bill abstract No. 68606 dated 27-3-87 at Exb.M-6. The contention of the employer is that the workman had collected Rs. 149/- from two passengers and had issued to them unpunched tickets of Rs. 100/- which were old unused tickets and not entered in his way bill and the rest of the tickets amounting to Rs. 49/- were from his tray which were issued without punching. According to the workman he had issued the correct tickets to the passengers from his tray and that he had issued 14 tickets of Rs. 10/- denomination and 2 tickets of Rs. 4/- denomination. He has stated that he closed his way bill at Mollem and at that time the opening ticket number of Rs. 10/- denomination was 419548 and at the place where the bus was checked the closing number of ticket of Rs. 10/- denomination was 419862. He has also stated that he had issued 2 tickets of Rs. 4/-denomination bearing number 557551 and 557552. Thus the total value of the tickets came to Rs. 148/-. However the employer has produced the tickets at Exb.M-2 and M-3 which were impounded by them

from the passengers. As per M-2 and M-3 the workman had issued 14 tickets of Rs. 10/- denomination; 1 ticket of Rs. 4/- denomination; 1 ticket of Rs. 3/- denomination; and 4 tickets of Rs. 0.50p. denomination. The total value of the above tickets comes to Rs. 149/- which proves the contention of the employer that the workman had collected the fare of Rs. 149/- from two passengers as mentioned in the charge sheet. The above evidence disproves the contention of the workman that he had issued tickets of the value of Rs. 148/- and also that he had issued only 10 tickets of Rs. 10/- denomination and 2 tickets of Rs. 4 denomination.

11. The workman's contention is that issuing of 14 tickets of Rs. 10/- denomination and 2 tickets of Rs. 4/- denomination has been entered by him in the way bill. It is not in dispute that the line checking staff checked the bus at Varur, a place at a distance of about 20 kms from Hubli. The way bill has been produced at Exb.M-4. Mr. Francis Dias, the employer's witness who was the member of the line checking staff has stated that the workman did not close the way bill when the bus was stopped for checking. The workman in his evidence has admitted that he did not close the way bill at Hubli which was admittedly a closing point. He has given the reason for not closing the way bill that no passengers boarded the bus at Hubli. However in his cross examination he admitted that even if any passengers did not alight from the bus or any passenger did not board the bus at the checking point, the conductor has to close the way bill. Therefore the reason given by the workman for not closing the way bill at Hubli cannot be accepted. He has stated that he was closing the way bill when the bus was stopped by the checking staff but he was directed not to close the way bill and therefore he stopped. In the evidence of the employer's witness Shri Francis Dias, no suggestion was put to him in this respect. There is no evidence to prove that the workman was asked by the line checking staff not to close the way bill. The enquiry records produced before this Tribunal contains the xerox copy of the way bill. However in the evidence of the witness Shri Francis Dias the Inquiry Officer has made certain observations in connection with the way bill. He has stated that there are round up marks at 15 places in the way bill and the witness stated that there were no numbers of any denomination entered at the round up places except at 5 places of basic tickets of the denomination of 0.20; 0.40, 1.00; 2.00 and 4.00, which was in blue ink. The Inquiry Officer has observed that the rest of the numbers are closed by black ink. The workman has made contradictory statements in his evidence. At one place he has stated that he was closing the way bill when the bus was stopped for checking and that he stopped closing because he was directed by the line checking staff not to close the way bill. At another stage he has stated that he closed the way bill in the presence of line

checking staff by using black refill which was provided by them; and that the checking staff had made circle over the closing numbers in the way bill in black colour refill. It is not disputed by the workman that at 5 places the tickets of the denomination of 0.20; 0.40; 1.00; 2.00 and 4.00 are entered in blue ink. If the workman had closed the way bill in the presence of the checking staff he would have used the same blue ink pen which he was carrying for entering the other tickets, and as such his contention that the checking staff gave him the black refill pen for closing the way bill cannot be believed. In the cross examination of the employer's witness Shri Dias the workman did not suggest to him that the black ink pen was given to him by the checking staff and that he closed the numbers in the circles by using the said black ink pen. Therefore the only reasonable inference which can be drawn is that the workman has subsequently closed the way bill by entering the numbers in the circles made by the checking staff by using the black ink pen and created a false story that the black ink pen was given to him by the checking staff in order to explain the discrepancy of some numbers in blue ink and rest in the black ink. I therefore hold that the contention of the employer that the way bill was not closed by the workman where the bus was checked.

12. The 10 tickets of Rs. 10/- denomination were impounded by the checking staff from the two passengers starting from the numbers BA 417615 to 417624. These numbers do not tally, with the numbers in the way bill. The workman was having a ticket book of Rs. 10/- denomination starting from the numbers 456133 and 419523. Therefore if the workman had issued the above tickets of Rs. 10/- denomination to the passengers, from his tray, the tickets found with the passengers would have carried the numbers from the above two series. But the tickets found with the passengers carry totally different numbers, and they were unpunched tickets. The conductor's way bill abstract produced at Exb.M-7 was issued to the workman on 13-3-87 on the same route that is Panaji-Bangalore route. He was also issued ticket book containing tickets of Rs. 10/- denomination starting from the number 417615 and he had sold the tickets from the said book till the number 417679 which means that he had sold 64 tickets of Rs. 10/- denomination from the said book on 13-3-87. The tickets which were impounded from the passengers carry the numbers from 417615 to 417624, which means that, the said tickets were from the same ticket book which was issued to him on 13-3-87 and from which he had sold the tickets on 13-3-87 about 15 days prior to the date of the checking of the bus. All the said tickets which were found with the two passengers are unpunched tickets. The question is how these some tickets were sold by the workman on two different dates. Also it does not stand to reason that a passenger would

keep tickets with him for 15 days. In the above circumstances the only reasonable inference which can be drawn is that the workman has issued the tickets to the passengers of the value of Rs. 100/- which were unused old tickets and which were unpunched and these tickets were not entered in the way bill by the workman.

13. The workman has admitted that the tickets which were impounded by the checking staff produced at Exb.M-2 and M-3 are the unpunched tickets. The defence which has been taken by the workman is that his punching machine was broken and therefore he could not punch the tickets. This defence of the workman is unbelievable. His contention is that he had not punched the tickets which were issued to him even on 13-3-87, because he was authorised to issue tickets of Rs. 10/- denomination as luggage tickets. This contention of the workman is not supported by any evidence. The employer's witness Shri Dias has stated in his cross that the tickets of Rs. 10/- denomination are the passenger tickets and not luggage tickets. When the question was put to him in his cross examination as to what is to be done in case the punching machine is broken or not working, he stated that the conductor can use the pen. He stated that there are no instructions to this effect. Even if there are no such instructions from the management still it is obvious that the tickets are punched so that the passenger should not use the same tickets again and this punching can be done by using any pointed object like pen. The default notice dated 28-3-87 issued to the workman has been produced at Exb. M-1. In this notice it is clearly mentioned that the workman had issued unpunched tickets to two passengers. In this default notice there are columns "statement of conductor" and "remarks if any". When the default notice was issued to the workman at that time he could have given the statement that his punching machine was broken or he could have put his remark in the way bill to that effect. But the workman did not do anything of the sort. Also he could have produced the punching machine before the checking staff or deposited the same with the employer immediately thereafter to prove that the said machine was broken but he did not do so, and instead retained the same with himself and produced the same in the enquiry to show it to the Inquiry Officer. Since the punching machine was retained by the workman it was possible for him to interfere with the said machine and show that it was broken. There is absolutely no evidence to prove that the punching machine was broken on 28-3-87 and therefore he could not punch the tickets. I therefore hold that the charge that the workman had issued unpunched tickets to the passengers is proved. I therefore hold that the employer has succeeded in proving the charges levelled against him in the charge sheet dated 7-4-1987. I have gone through the findings dated 23-2-1988 of the Inquiry Officer holding the

workman guilty of the charges. His findings are based on evidence on record and he has given reasons for arriving at such findings.

14. As per the charge sheet the acts alleged against the workman constituted following misconduct under the Certified Standing Orders.

28(XV) Theft, fraud or dishonesty in connection with the employer's business or property inside or outside the establishment or theft of property of another employee within the premises of the establishment.

28(XXXV) Breach of any rule or instructions given by the superiors for the proper functioning or safety of the establishment.

28(LXI) Breach of any of the provisions prescribed to be complied with by a workman under the standing orders.

15. It has been held by me that the charge of issuing unpunched unused old tickets of Rs. 100/- and not entering them in his way bill and also issuing tickets amounting to Rs. 49/- from his tray without punching. The above act on the part of the workman is certainly a dishonest act committed with the intention of misappropriating the revenue of the employer. The above act is also certainly in breach of the rules and instructions of the employer as the conductor is supposed to punch the tickets at the time of issuing them and he is also supposed to enter the tickets in the way bill. I therefore hold that the charges proved against the workman constitute misconduct under clause 28(xv) and 28(XXXV) of the Certified Standing Orders of the employer. In the circumstances, I hold that the charges of misconduct levelled against the workman in the charge sheet dated 7-4-1987 are proved and therefore I answer the issue No. 1A in the affirmative.

16. Issue No. 2: While deciding the issue No. 1A it has been held by me that the charges against the workman that he collected fare of Rs. 149/- and issued unpunched unused old tickets of Rs. 100/- and not entering them in his way bill and also that he issued tickets amounting to Rs. 49/- from his tray without punching them are proved and that the said acts constituted misconduct under clause 28(xv) and 28(XXXV) of the case. The act committed by the workman is a dishonest act committed with the intention of misappropriating the revenue of the employer and the said act is also in breach of the rules and instructions of the employer. The workman was working with the

employer as a conductor. The employer is running the business of passenger transport through its buses. The work of the conductor is of supreme confidence and faith. He is in charge of the vehicle when it is on route and he is supposed to provide the revenue to the employer by collecting fare from the passengers by issuing correct tickets to them. The employer runs its business from the said revenue. In the present case the workman was working as conductor and he has acted dishonestly and thus he has breached the faith reposed in him by the employer. The employer has led evidence to prove that the past conduct of the workman was not good. The workman has not led any evidence. The employer has examined its Depot Manager Shri Anil Prabhu. He has produced the memos dated 7-7-84 Exb. E-1, 31-7-84 Exb. E-3, 12-7-84 Exb. 4, 16-7-84 Exb.E-6 and 4-8-84 Exb.E-7. He has also produced the replies dated 11-7-84 Exb. E-2, 27-7-84 Exb. E-5 given by the workman to the memo dated 7-7-84 and the memos dated 12-7-84 and 16-7-84 respectively. In the cross examination of Shri Prabhu the receipt of the memos is not denied by the workman, what is tried to be contended by the workman is that the Depot Manager had no authority to issue the memos. Mr. Prabhu has denied this contention of the workman. In the reply dated 11-7-84 Exb. E-2, and 27-7-84 Exb. E-5 the workman did not raise the objection that the Depot Manager had no authority to issue the memo to him. It is raised for the first time in the cross examination of Mr. Prabhu, which is not supported by any evidence. The memos dated 7-7-84 Exb.E-1 and 16-7-84 Exb. E-6 are issued to the workman for finding excess amount with him. The said excess amount was found because the workman collected fare from the passengers but did not issue tickets to them. The memo dated 12-7-84 Exb. E-4 was issued to the workman for finding Rs. 27.40 short with him. The said shortage was found because the workman did not collect proper fare from the passengers. The memos dated 31-7-84 Exb.E-3 and 4-8-84 Exb. 4-8-84 Exb.E-7 were issued to the workman informing him that the explanations given by him, in the reply were not found satisfactory, and therefore by the said memos warnings were given to him. The above evidence produced by the employer sufficiently proves that the past conduct of the workman was not good, and he was negligent in discharging his duties. In my view therefore considering the misconduct involved and the past conduct of the workman the punishment of dismissal from service imposed upon the workman by the employer is legal and justified. I therefore hold that the workman has failed to prove that the action of the employer in dismissing him from service with effect from 6-7-1988 is illegal and unjustified. Hence, I answer the issue No. 2 in the negative.

17. Issue No. 3: It has been held by me that the workman has failed to prove that the action of the employer in dismissing him from service with effect from 6-7-88 is illegal and unjustified. I have held that the dismissal of the workman from service is legal and justified. This being the case the workman is not entitled to any relief. I therefore hold that the workman is not entitled to any relief and hence answer the issue No. 3 in the negative.

In the circumstances, I pass the following order.

ORDER

It is hereby held that the action of the management of M/s Kadamba Transport Corporation Limited, Panaji, in dismissing the workman Shri Bombi Bicaro Gavde, Conductor, with effect from 6-7-1988 is legal and justified. It is hereby further held that Shri Bombi Bicaro Gavde is not entitled to any relief.

No order as to costs. Inform the Government accordingly.

Sd/-
(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal.